IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 4, 2009 Session

SHERRILL MARION HEADRICK v. PEGGY IRENE HEADRICK

Appeal from the Circuit Court for Sevier County
No. 2005-0101-IV O. Duane Slone, Judge

No. E2008-02284-COA-R3-CV - FILED OCTOBER 30, 2009

In this divorce case, the trial court granted Sherrill Marion Headrick ("Husband") a divorce from Peggy Irene Headrick ("Wife"). As a part of its property division, the court ordered most of the parties' real property sold at auction. After the sale, Wife objected to the sale and moved the court not to confirm it. She sought to reopen the bidding process to allow offers of ten percent above the sales price by new prospective buyers. Following a hearing, the court confirmed the sale. Wife appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded.

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

Anne Greer, Knoxville, Tennessee, for the appellant, Peggy Irene Headrick.

Cynthia Richardson Wyrick, Sevierville, Tennessee, for the appellee, Sherrill Marion Headrick.

OPINION

I.

The trial court entered a final judgment of divorce on May 12, 2008. On that same day, it entered a separate decree of sale for certain real property acquired by the parties during their marriage. Simply described, these properties are as follows: their home situated on 1.2 acres of land ("the marital home"); 66.75 acres of land with some improvements ("the Headrick Farm"); a house situated on 1 acre of land ("the Rock House"); and three lots in "Wilderness Mountain Estates," *i.e.*, a 2.1 acre unimproved lot, a .71 acre unimproved lot, and a .65 acre lot with a partially constructed cabin.

In dividing and distributing the marital property, the trial court awarded Wife the three lots in Wilderness Mountain Estates valued by the court at a combined total of $280,000. The court ordered that the remaining real property would be sold at public auction. Its order expressly provides that "all of the parties' [remaining] real property . . . , except the 'Rock House', shall be sold . . . as one Tract . . . ." By ordering the property so divided, the court rejected Wife's proposal that the property be divided and sold off in a number of tracts of five acres or more. Tract 1– the marital residence and the Headrick Farm – were to be sold first. After Tract 1 was auctioned, Tract 2, being the Rock House, was to be sold. After the costs of the sale, including advertising, and all liens and encumbrances were paid, the proceeds of the auction were ordered to be equally divided between the parties, except that Husband was to receive the first $304,034, representing an offset for the value of the real property that had been awarded to Wife plus certain personal property and a Bulldozer also awarded to her.

The decree of sale appointed the circuit court clerk to conduct the sale, pursuant to the following relevant terms and conditions:

> That the property shall be sold on **Saturday, July 19, 2008**, at **10:00 a.m.**, on the site of the real property, pursuant to advertisement, and the Clerk shall sell said real property to the highest and best bidder that is certified to be a qualified buyer by a Federally insured lending institution within ten (10) days prior to the sale, for cash, in bar of all rights of redemption. Upon confirmation by the Court, title of the purchaser shall be absolute.
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> That the terms of the sale shall be ten percent (10%) down on the day of sale, with the remainder due at closing, with the closing to take place within thirty (30) days.

(Bold print in original). The court clerk filed a "notice of sale of land" with the pertinent information and details on May 29, 2008. A hearing on several issues pertaining to the auction was held on June 17, 2008.[1] In the resulting order, the court noted that the parties had agreed to use Marty Loveday & Associates, a real estate and auction firm, as the auctioneer for the sale. The order further provides, in relevant portion:

> That the buyers at the sale to be conducted by Marty Loveday & Associates shall be qualified in the manner that Marty Loveday customarily requires,[2] which amends the pre-qualification requirements set forth in the Court's Orders of May 12, 2008.

[1]The hearing transcript is not included in the appellate record.

[2]The record does not reflect what buyer qualifications, if any, were required by the auctioneer.

> That Marty Loveday & Associates and the Clerk of Court shall have a total budget of up to FIVE THOUSAND . . . DOLLARS for advertising and providing notice in the newspaper of the sale, with Marty Loveday using his discretion as to whether the property will be advertised in the Knoxville News-Sentinel.
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> That Marty Loveday and Associates shall direct what, if any, minor cosmetic clean-up needs to be performed prior to the sale.

(Capitalization in original; footnote added). The Order also provides that "all provisions of the May 12, 2008 Orders entered by the Court not specifically altered herein shall remain in full force and effect."

Both parties submitted professional appraisals of the properties to be sold. Husband's appraiser, Peter E. Medlyn, valued Tract 1, in its current condition as vacant land with some improvements (including the marital home, a barn, and a garage), at $670,000. Medlyn found that the highest and best use of the property was for an overnight rental cabin development. Of the improvements on the otherwise largely vacant land, he found that only the Rock House had value and that the one-acre site with the Rock House could be sold individually. He assigned no value to the marital home, barn or other improvements, finding that they "are older and would not be complimentary to a resort development of the property." He valued Tract 2, the Rock House, at $175,000. Thus, the total property value, according to Husband's appraiser, was $845,000. Wife's appraiser, Drew A. Overbay, based his estimated value of Tract 1 on dividing the acreage into nine lots of five or more acres plus one additional tract of 13.53 acres; he estimated the total value of the acreage in Tract 1, as so divided, to be $1,490,000. Overbay found that the present use of land in the community was 40% single family homes, 50% vacant, and 10% commercial, and said that his appraisal was based on the highest and best use of the subject property. Overbay separately valued the marital home at $255,000, and the Rock House at $300,000. Thus, under the appraisal of Wife's expert, the total estimated value of all the property listed for auction was $2,045,000.[3]

On July 22, 2008, the court clerk filed her report of the sale that took place, as scheduled, on July 19. Tract 1 was sold to Mr. Paul M. Maples, Jr., for a total purchase price of $645,000. Tract 2 was sold to co-purchasers, Husband and Mr. Ben R. Reams, for a total purchase price of $215,000. As to the purchasers of both tracts, the report noted that they "did comply with the terms of the sale by depositing the required ten percent . . . down" with the balance due at the closing to be held within 30 days of the sale date. In her report, the clerk further noted that she sold the property as ordered "after duly advertising according to law. . . ." The record reflects that the sale was advertised on the website of the auctioneer. While Husband's counsel stated at the confirmation hearing that the sale was also advertised "in the newspaper, flyers were sent to all the normal people,

[3] In addition, both appraisers valued the lots awarded to Wife. Mr. Medlyn appraised Lot 6 containing 2.1 acres at $160,000, and Lot 4 at $50,000; he did not appraise the additional .65 acre lot. Mr. Overbay valued the lots at $70, 000, $60,000, and $60,000, respectively, for a combined value of $190,000.

flyers were put in all the banks around, attorneys' offices, et cetera, advertised on the radio, on the internet," the record before us contains no testimony or other evidence to this effect.

On July 25, 2008, Wife filed an objection to the confirmation of the sale. She requested that the bidding be reopened based on dual contentions: that both tracts sold below their fair market value and "there are additional buyers willing to pay in excess of . . . $860,000." In addition, Wife alleged that the auction had not been properly advertised and that the property was not mowed prior to the auction. Wife supplemented her motion with two offers to advance the bidding, one for each tract. On August 1, 2008, Mr. Billy Proffitt faxed to the court clerk an offer to buy Tract 1 for $709,000. The offer provided that ten percent of that price, or $70,900 was to be held by the court clerk "upon acceptance." On August 15, a letter from the Sevier County Bank was sent to the clerk on behalf of Mr. Proffitt. In its entirety, the letter advised that Mr. Proffitt had contacted the bank in connection with his bid and further stated: "This is to advise Mr. Proffitt has sufficient financial capacity to consummate the purchase of this property if his bid is accepted."

On August 11, 2008, Ms. Boyce Snyder faxed to the clerk an offer to purchase Tract 2 for $240,000, again with ten percent to be held by the court clerk "upon acceptance." Neither Proffitt nor Snyder actually tendered to the clerk a deposit of any funds in support of their offers.

On August 18, 2008, the court held a hearing to consider confirmation of the auction sale and Wife's objection and her request that the bidding be reopened. Wife, who had worked in the real estate business in Sevier County for 25 years, was the only witness to testify. At the hearing, she noted her opinion that the auction sale did not bring a fair price for the properties. She was particularly "shocked" when Tract 1 "only brought six hundred and forty-five thousand. . . ." Wife informed the court that other potential buyers (in addition to Mr. Proffitt and Ms. Snyder) had approached her about the properties, including two who were located out of state. She told the court she wanted the bidding reopened to "give these other people a chance." According to Wife, the out-of-state buyers were aware of the auction but decided not to attend because they believed the property would bring "over two million dollars and it was out of their league." Wife said she was not in possession of any actual documents such as purchase offers or letters of qualification submitted by these additional, potential buyers. Essentially, Wife, through counsel, requested that the court "give these folks that have more money an opportunity to say we'll pay it. These are signed contracts by folks who have the money and can write a check." Wife noted her assumption that [Husband] "would want to encourage the Court to approve the additional offers. . . ." To the contrary, however, Husband asked the court to confirm the auction sale.

At the conclusion of Wife's testimony, Husband moved for a judgment on the issue of the confirmation of the sale. In granting the motion, the trial court stated:

> The Court does find that this auction was conducted adequately. It was done in a manner to achieve the fair market value of the property sold, and that in all respects the property was properly advertised, marketed, and all good faith buyers had a reasonable opportunity to bid competitively on the date of the sale. The sale itself shall be confirmed pursuant to the report filed by the Circuit Court Clerk.

On August 18, 2008, the court entered an order confirming the sale of both tracts of property pursuant to the clerk's report.

Wife moved the court to reverse its confirmation of the sale "so that the best possible price may be obtained" for the property. In a conference call on the matter, the court heard argument from the parties reiterating their positions for and against reopening the bidding. In short, Husband argued that because the offerees relied upon by Wife failed to comply with the terms of the auction sale, the court "got it right the first time." Moreover, counsel for Husband further addressed the issue before the court as follows:

> [O]nce there's been confirmation, which there has here, there cannot be reopening based on an advance. So, if they come back and provide their letter [of credit] now, it's actually too late. But, you know, despite that, they just are not even properly before the Court on an advancement issue because they have not followed what had to be done.
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> One thing I would point out just finally is, Your Honor, one of the key things that you look at with regard to why you might not want to reopen bidding is discouraging bidders from coming to the sale in the future. This was a private auction for all senses of the word. It was conducted just as Mr. Loveday would conduct any other private auction, as the Court can see from the minute book and from the testimony that you heard over in Grainger County previously about him, you know, sending out fliers and so forth. So, basically, these parties got the benefit of a private auction, even though it was a Court ordered sale. The Court certainly I think could take judicial notice of the fact that we've got people involved in the auction that are . . . actively involved, I guess, in the real estate market in Sevier County. And if the Court reopens the sale, then why would people like them come to a sale? Why not wait and let's see what it brings and then see if we can't sneak an extra ten percent in and get it at that point.

In declining to reverse its confirmation of the sale and reopen the bidding, the trial court stated:

> But Mr. Proffitt is a . . . Sevier County banker. And there wasn't evidence introduced either way about his notice of the sale, but it was well advertised. And Mr. Proffitt certainly could have participated in the actual bidding process. The Court would be very concerned in setting a precedence to set aside a sale or not confirm a sale, especially when you have someone that is knowledgeable or should be or is as knowledgeable as Mr. Proffitt in the local real estate market to sit back and wait on the bidding process and then make his offer instead of actively participating in the bidding process itself,

> which might have even driven the price higher that what he is now offering by way of contract. And I understand the argument about reopening the bid – the bidding process. I do believe that the affect of that would have a chilling affect on future sales. For that and all the other reasons that I originally confirmed the sale for, the Motion to Alter or Amend . . . is overruled.

Wife filed a timely notice of appeal.

On January 28, 2009, Mr. Proffitt, by letter, advised the clerk that he withdrew his bid to purchase Tract 1. In the letter, Mr. Proffitt noted his understanding that "in order for his bid to be considered, it was necessary for him to file a letter of credit with [the clerk] and, since Mr. Proffitt elected not to file this letter of credit, it was his further understanding that his offer to raise the previous bid was not accepted."

II.

Wife raises a single issue for our review: Whether the trial court correctly confirmed the auction sale of the parties' real property and refused to reopen the bidding after the auction.

III.

The factual findings of a trial court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. Tenn. R. App. P. 13(d); ***Bogan v. Bogan***, 60 S.W.3d 721, 727 (Tenn. 2001). With respect to legal issues, our review is conducted "under a pure de novo standard of review, according no deference to the conclusions of law made by the lower courts." ***Southern Constructors, Inc. v. Loudon County Bd. of Educ.***, 58 S.W.3d 706, 710 (Tenn. 2001).

A party may file a motion to alter or amend a judgment within 30 days after its entry. *See* Tenn. R. Civ. P. 59.04. We review the grant or denial of a motion to alter or amend a judgment under an abuse of discretion standard. ***Stovall v. Clarke***, 113 S.W.3d 715, 721 (Tenn. 2003); ***Harris v. Chern***, 33 S.W.3d 741, 746 (Tenn. 2000). An abuse of discretion occurs when a trial court applies an incorrect legal standard, or where its decision is contrary to logic or reasoning and causes an injustice to the complaining party. ***Eldridge v. Eldridge***, 42 S.W.3d 82, 85 (Tenn. 2001) (citation omitted).

IV.

Wife argues that it was error to confirm the sale because:

> (1) the Court owes a duty to obtain the highest possible price for property sold by the Court and there was no sufficient reason . . . to deny the motion to open the bidding; and (2) the offers to advance the bid created an evidentiary presumption that there was an irregularity or circumstance that prevented the owners from obtaining a fair price for the property sold at auction. . . .

Husband essentially responds that there was no evidence to indicate that the auction sale brought an inadequate sales price, and no valid offers or evidence of any irregularities to support reopening the bidding.

Gibson's Suits in Chancery (Inman, 7th ed.) sets forth accepted principles and procedures applicable to conducting court-ordered property sales. As relevant to the present case, it provides as follows:

> § 279. Duties of the Court in Making Sales. – It is an exercise of great power on the part of a Court to sell a person's property, and especially his land, against his will. In ordering a judicial sale, the Court should diligently ascertain: (1) that the proper parties are before the Court to give a good title to the purchaser; (2) that the pleadings and proof justify the sale; (3) that there is a proper decree of sale; (4) that the sale is made by the Master in strict compliance with the decree; (5) that the best price possible is obtained for the property sold; and (6) that the report of sale by the Master, and the confirmation thereof, are in regular form. The Court acts as a sort of judicial agent for the parties in making a sale.
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> In ordering sales of property, real or personal, the Court has a duty to the owner of the property coupled with a duty to the buyer of the property. The duty to the owner of the property is discharged when the highest possible price has been obtained for it. The duty to the purchaser is discharged by giving him a good title to what he buys, or at least, such a title as he has the right in reason to expect. It savors of judicial tyranny and oppression, and is certainly judicial injustice, either to sacrifice the owner, by selling his property for a grossly inadequate price, or to sacrifice the buyer, by taking his money and giving him a defective title in return.
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> * * *

§ 286. When a Party May Have a Sale Set Aside. – A party may have a sale set aside whenever the property has not sold for a fair price, and there has been: (1) some failure of the Master to advertise the land properly, or to sell at the right time, or at the right place; (2) the Master has been guilty of some misconduct tending to diminish the price, or discourage bidding; (3) others have been guilty of combinations, or other acts injuriously affecting the sale; (4) the weather was so exceedingly inclement, or in some other way bidders were prevented, or deterred, from attending the sale; or (5) for some other reason, not the fault of the party complaining, a fair sale was not had. Mere inadequacy of price, however, without more, ordinarily will not justify a Court in setting aside a sale, unless an advance bid is tendered. The only test a Court can have of the value of property sold at a forced sale, is the price it will bring on due notice, at a public sale fairly conducted.

* * *

§ 289. When Biddings Will Be Opened. – Since a sale of land by the Master is conditioned upon its confirmation by the Court, and the chief aim of the Court is to obtain a fair price for the property, it is an accepted practice of the Court to "open the biddings"; that is, to allow a person to offer a larger price than the estate originally sold for by the Master. Upon such offer being made, and the terms of the original sale complied with, a resale may be ordered. Biddings may be opened at any time before a confirmation of the Master's report of sale, upon proper application being made, and a tender of an advance of at least ten percent.

The proper time for opening biddings is before the Master's report of sale has been confirmed. Thereafter, increase of price alone, however large, is not sufficient to induce the Court to grant the application, although it is a strong auxiliary argument when there are other grounds. After confirmation the purchaser is to be regarded as the owner of the estate according to his purchase, and his title will not be disturbed except in case of fraud, accident, mistake, or the existence of a relation of trust, and then only on an original complaint, setting forth the equities relied on, and making the proper parties and the proper prayers, so that issues of law and fact may be regularly made and determined.

On applications to open bidding, the Court should rule so as to secure the highest possible price for the land it sells, provided that such ruling does not (1) unduly delay the progress of the action, (2) does not encourage or reward negligence, on the part of those interested in

> bidding, or procuring bidders, and (3) does not tend to generally discourage bidding at the time and place of the original sale by the Master. The policy of the law is to make the original sale by the Master a finality, and not an experiment. The reservation of the right to set aside a sale, and to open the biddings, is a mere safeguard and a precaution against circumstances and irregularities tending to lessen or prevent due competition. An offer to advance the reported bid, is deemed by the Court presumptive evidence of some such circumstance or irregularity.

See also Tenn. Code Ann. § 35-5-110 (2009) (providing that "[i]n all sales of land made under orders, and decrees of the . . . courts where an advance bid of as much as ten percent (10%) of the original bid is made, the clerk, or clerk and master, of the court is empowered to accept the advance bid and reopen the biddings. . . ."); Tenn. Code Ann. § 35-5-113 (2009)("[t]he court, in its discretion, may impose any additional conditions or procedures upon the sale of property in divorce cases as are reasonably designed to ensure that the property is sold for its fair market value.").

Returning to the present case, we first consider Wife's assertion that the auction did not bring a fair price for the property. We proceed mindful of the well-settled duty of the court below "to see that a fair price [is] realized before confirming the sale." ***Hartsfield v. Holt***, No. 83-386-II, 1984 Tenn. App. LEXIS 2767, *20 (Tenn. Ct. App. filed March 22, 1984). Taking Husband's appraisal, the property was valued at $845,000. The successful bids at the auction totaled $860,000. Wife essentially argues that the advanced bids totaling $949,000 was money "sitting on the table" and there was no reason for the court not to open the bidding and get the highest possible price for the property. Although Wife asserts that Husband's appraisal undervalued the property, there is no evidence to support her assertion. The court expressly rejected Wife's proposal to subdivide the property before the sale and thus impliedly rejected Wife's contention that the property would bring more if subdivided and sold in tracts of five or more acres. Wife's appraiser did not express an opinion as to the value of the property if it were not subdivided. Moreover, it appears that the trial court generally placed less stock in Wife's appraisal than those submitted by Husband, as evidenced by the fact that the trial court assigned a value of $280,000 to the three lots awarded to Wife, far more than the value of $190,000 assigned by Wife's appraisal. We think that the fact the auction sale brought a price beyond the total appraised value of the combined properties is the best evidence that they were sold for fair market value.

Wife's position that the highest possible price was not obtained assumes that there were in fact valid offers to advance the bidding. In ***Reese v. Copeland***, 74 Tenn. 190, 192 (Tenn. 1880), the Tennessee Supreme Court explained the practice of reopening bidding in chancery court sales:

> Under the practice of the court of chancery in England, until changed by statute, the court considered itself as having a greater power over a contract for the sale and purchase of land made with itself than when made with any other: ***Savile v. Savile***, 1 P. W. 745, 747. The aim of the court was to obtain as great a price as possible for the estate, and, for this purpose, it was in the habit of opening the

> biddings after the land had been sold, upon the offer of a larger price: 2 Dan. Ch. Pr. 1285; ***Barlow v. Osborne***, 6 H. L. C. 556. In this State, that practice is still followed. The sale of land under a decree of court is not complete until confirmation: ***Word v. Morgan***, 4 Hum. 372; ***Eakin v. Herbert***, 4 Cold. 116. The biddings will be opened upon a mere advance of ten per cent.: ***Click v. Burris***, 6 Heis. 539; ***Wilson v. Shields***, 3 Baxt. 65. The advance being properly secured: ***Childress v. Harrison***, 1 Baxt. 415.

In ***Click v. Burris***, 53 Tenn. 539, 545 (Tenn. 1871), the Supreme Court announced the applicable rule as follows: "[W]hen it appears that an increased bid of ten per cent. has been offered, the biddings will be opened." As discussed, a specific procedure exists to open the bidding after an auction is held but before the sale is confirmed. "Upon such offer being made, and the terms of the original sale complied with, a resale may be ordered. Biddings may be opened at any time before a confirmation of the Master's report of sale, upon proper application being made, and a tender of an advance of at least ten percent." *Gibson's Suits in Chancery*, §289.

The fact that Mr. Proffitt and Ms. Snyder each submitted a post-sale offer is not in dispute. However, neither bidder complied with the terms of the original sale. Mr. Proffitt provided a reference letter from his bank, but, by his own admission, it was not the contemplated letter of credit that the decree of sale required. Ms. Snyder provided no evidence of her financial capacity to fulfill her offer. Further, neither bidder tendered ten percent to advance the purchase price as required; instead, both Mr. Proffitt and Ms. Snyder offered to deposit the necessary funds with the clerk "upon acceptance" of their offers.

Even assuming that the bids were not deficient, the trial court found nothing to suggest that a fair price was not realized at the auction sale. Again, the trial court found that the auction sale was "adequately conducted" and "done in a manner to achieve the fair market value . . ., and that in all respects the property was properly advertised, marketed, and all good faith buyers had a reasonable opportunity to bid competitively on the date of the sale." Although Wife contests each of these findings, she offers no evidence against them. As discussed earlier, we conclude that evidence of fair market value is demonstrated by the fact that the properties sold above or very near their values as appraised in their current condition.

Next, Wife complains that there was inadequate advertising of the auction, but offers nothing to substantiate her position. She simply concludes that "[n]o evidence was introduced to prove that the auctioneer used his discretion in a manner to bring about an optimal price. . . ." It is true that there is little evidence before us other than the notice of sale filed by the court clerk and the ads that appeared on the auctioneer's website. However, the court clerk in her report of the sale asserted that she sold the property "after duly advertising according to law. . . ." On this point, we find *Gibson's* further instructive. Regarding the procedure for setting aside a judicial sale, Section 288 provides, in relevant part:

> When the Master reports that he had sold the land pursuant to the decree, or has advertised the sale as required by law, or by the decree,

> the Court will presume that his report is true. The truth of the report cannot be put in issue by an objection to the effect that the Master did not advertise as required, or failed to do any other thing as reported, unless there by some evidence in the report itself, or exhibited thereto, or elsewhere on file in the cause, contradicting the report.
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> * * *
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> A motion attacking a . . . sale must be positive in its averments. Information alone is insufficient to set the machinery of the Court in motion. A party who assails a judicial proceeding must ascertain the real facts before filing his motion, and must be able to allege those facts with definitiveness and positiveness.

In summary, at the confirmation hearing, Wife provided nothing but her own, unsupported conclusions regarding the inadequacies of the sale. She had the opportunity to, but did not, call witnesses to contradict the clerk's assertion that the auction was properly advertised and conducted pursuant to the decree of sale. "[T]he law presumes that all officers charged with the performance of a duty have performed it, until the contrary is made to appear by proof." ***Childress v. Harrison***, 60 Tenn. 410, 411 (Tenn. 1872). Neither did Wife present either Mr. Proffitt or Ms. Snyder to testify regarding their knowledge, or lack thereof, of the auction sale or the reasons they did not attend. Finally, Wife attributes evidence of some irregularity or even shady circumstance to the fact that Husband did not join in her efforts to have the bidding reopened. She argues that "[d]espite Wife's continuously inquiring about Husband's motives behind his objection [to reopening the bidding], the Court never once, in the course of proceedings, posed the question to Husband's attorney." As we see it, the simple fact is that Wife failed to call any witnesses to testify to this or any other aspect surrounding the sale. The fault in that regard can only be placed with Wife, not the trial court.

The record before us is devoid of any evidence, with the exception of the "advanced bids" made, for the trial court to even consider exercising its discretion to reopen the bidding. *Gibson's Suits in Chancery* further advises:

> The advisability of reopening the bids, in effect, selling the property twice, is strictly discretionary. There are excellent arguments pro and con. If reopening is not allowed, the Master's sale is essentially absolute. If reopening is allowed, prospective bona fide bidders may not bid at the first sale, thereby forcing an inadequate sales price not compensated for by a minimum raise requirement. It should be remembered that the Court may, in any case, refuse confirmation and order a re-sale. The better rule probably is that biddings should not be reopened absent extraordinary circumstances and except where persons under disability are involved.

Gibson's Suits in Chancery, Section 289, at n. 29. In the present case, as we have noted, the offers to advance the bidding were deficient and no other circumstance justifying reopening the bidding

or setting aside the sale was demonstrated. Accordingly, the evidence does not preponderate against the trial court's finding that the sale was adequately conducted to bring a fair price. The trial court did not abuse its discretion in confirming the sale.

Lastly, to the extent that Wife sought to open the bidding *after* the auction sale was confirmed, the trial court properly rejected her motion. "After the biddings have once been opened and closed, and the sale confirmed, it is no easy matter to have them again reopened." *Gibson's Suits in Chancery*, § 293. Similarly stated, "all the authorities concur in requiring very strong facts and circumstances to set aside a sale after confirmation, and it is held that no advance of price, however large, will have the effect to open the biddings." ***Click***, 53 Tenn. at 543 (citing ***Houston v. Aycock***, 5 Sneed 413)). Thus, "[a]fter confirmation, there must be equitable circumstances, as well as an advanced bid, to justify the Court in reopening the biddings." *Gibson's Suits in Chancery*, § 293. No such circumstance was presented here.

V.

The judgment of the trial court is affirmed. This case is remanded to the trial court, pursuant to applicable law, for enforcement of its judgment and for collection of costs assessed below. Costs on appeal are taxed against the appellant, Peggy Irene Headrick.

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CHARLES D. SUSANO, JR., JUDGE